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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,841	02/23/2004	Bruce Allan Crawford	CHANN.P002	1477

28752 7590 09/22/2006

LACKENBACH SIEGEL, LLP  
LACKENBACH SIEGEL BUILDING  
1 CHASE ROAD  
SCARSDALE, NY 10583

EXAMINER
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MEISLIN, DEBRA S

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

82

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/784,841	CRAWFORD, BRUCE ALLAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	D S. Meislin	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

Art Unit: 3723

1. Claims 30-31 and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The following constitutes new matter which should be deleted from the claims:

Claim 30 defines a "first" notch elongated wall being "rectilinear". The original disclosure does not disclose the walls of the first notch in rectilinear disposition.

In claim 31, "said corner frictionally engages...." is not supported by the original disclosure.

In claim 38, the "first jaw being disposed in a first plane" and the "second jaw being disposed in a second plane" is not supported by the original disclosure.

2. Claims 29-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 29, line 8 is misdescriptive since the first and second members are not disposed between the handles and the jaws. As best understood, "disposed" should be changed to ---,said pivot member being disposed---.

In claim 34, "disposed of said first and second notches" is grammatically incorrect and not understood.

In claim 39, "the means for pivotally connecting" lacks antecedent basis. In lines 3-4, "with operable engagement the said differently sized locknuts" is grammatically

Art Unit: 3723

incorrect and not understood. The “means” is not transversely movable with respect to what element(s).

Lines 1-2 of claim 40 is grammatically incorrect and not understood.

In claim 42, “of” should be ---from--- since “disposed of...” is not understood.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 29-33, 38 and 40-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Negus (5595094).

Note that the claims define “a hand tool” and not the combination of a hand tool and locknuts.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Nation or Negus are capable of engaging variously sized/shaped locknuts.

5. Claims 29-33 and 38-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nation (1782364).

Note that the claims define “a hand tool” and not the combination of a hand tool and locknuts.

Art Unit: 3723

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Nation or Negus are capable of engaging variously sized/shaped locknuts.

6. Claims 32-33 and 37 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. With respect to claims 32-33, since the locknuts have not been defined as being a part of the invention, limitations directed solely to the locknuts do not further limit the claims. With respect to claim 37, the subject matter thereof is redundant in view of claim 36 on which it depends.

7. Claims 34-36 may be given favorable consideration if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

Art Unit: 3723

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 29-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2, 6 and 12-26 of copending Application No. 11/349,680. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 29-42 are anticipated by claims 2, 6 and 12-26 of copending Application No. 11/349,680.

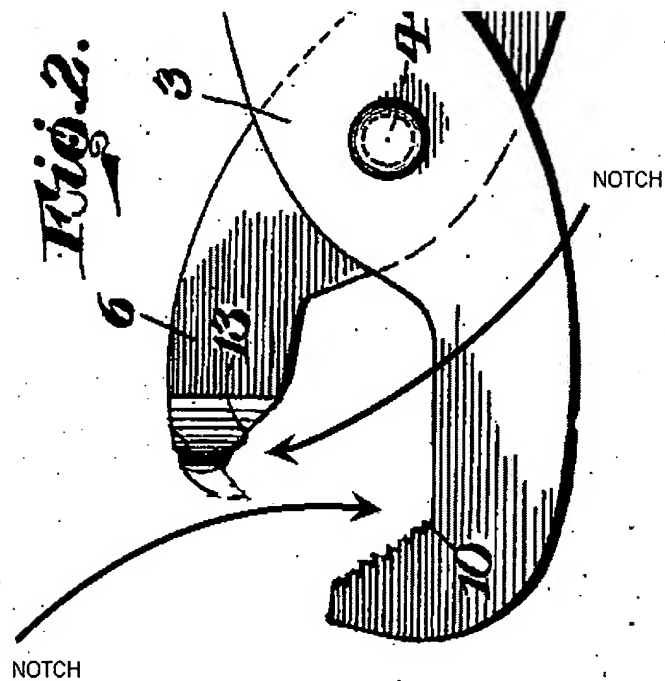
This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Applicant's arguments filed July 17, 2006 have been fully considered but are not persuasive.

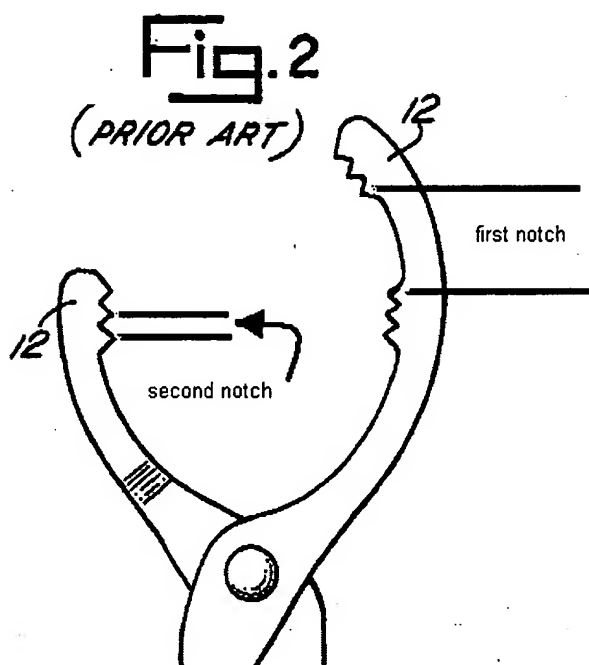
Note that the claims define "a hand tool" and not the combination of a hand tool and locknuts. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Nation or Negus are capable of engaging variously sized/shaped locknuts.

Art Unit: 3723

The prior art discloses the claimed notches and walls as broadly claimed by applicant. It is noted that the teeth of the prior art include distally disposed rectilinear walls. Nation and Negus disclose notches as shown below.



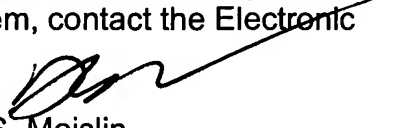
Art Unit: 3723



11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. S. Meislin whose telephone number is 571 272-4487. The examiner can normally be reached on M-F, alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
D.S. Meislin  
Primary Examiner  
Art Unit 3723

September 19, 2006